#### **UNIT TERMINAL OBJECTIVE**

1-4 At the completion of this unit, the paramedic student will understand the legal issues that impact decisions made in the out-of-hospital environment.

### **COGNITIVE OBJECTIVES**

At the completion of this unit, the paramedic student will be able to:

- 1-4.1 Differentiate between legal and ethical responsibilities. (C-2)
- 1-4.2 Describe the basic structure of the legal system in the United States. (C-1)
- 1-4.3 Differentiate between civil and criminal law as it pertains to the paramedic. (C-1)
- 1-4.4 Identify and explain the importance of laws pertinent to the paramedic. (C-1)
- 1-4.5 Differentiate between licensure and certification as they apply to the paramedic. (C-1)
- 1-4.6 List the specific problems or conditions encountered while providing care that a paramedic is required to report, and identify in each instance to whom the report is to be made. (C-1)
- 1-4.7 Define the following terms: (C-1)
  - a. Abandonment
  - b. Advance directives
  - c. Assault
  - d. Battery
  - e. Breach of duty
  - f. Confidentiality
  - g. Consent (expressed, implied, informed, involuntary)
  - h. Do not resuscitate (DNR) orders
  - I. Duty to act
  - j. Emancipated minor
  - k. False imprisonment
  - I. Immunity
  - m. Liability
  - n. Libel
  - o. Minor
  - p. Negligence
  - q. Proximate cause
  - r. Scope of practice
  - s. Slander
  - t. Standard of care
    - u. Tort
- 1-4.8 Differentiate between the scope of practice and the standard of care for paramedic practice. (C-3)
- 1-4.9 Discuss the concept of medical direction, including off-line medical direction and on-line medical direction, and its relationship to the standard of care of a paramedic. (C-1)
- 1-4.10 Describe the four elements that must be present in order to prove negligence. (C-1)
- 1-4.11 Given a scenario in which a patient is injured while a paramedic is providing care, determine whether the four components of negligence are present. (C-2)
- 1-4.12 Given a scenario, demonstrate patient care behaviors that would protect the paramedic from claims of negligence. (C-3)
- 1-4.13 Explain the concept of liability as it might apply to paramedic practice, including physicians providing medical direction and paramedic supervision of other care providers. (C-2)
- 1-4.14 Discuss the legal concept of immunity, including Good Samaritan statutes and governmental immunity, as it applies to the paramedic. (C-1)
- 1-4.15 Explain the importance and necessity of patient confidentiality and the standards for maintaining patient confidentiality that apply to the paramedic. (C-1)

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- 1-4.16 Differentiate among expressed, informed, implied, and involuntary consent. (C-2)
- 1-4.17 Given a scenario in which a paramedic is presented with a conscious patient in need of care, describe the process used to obtain consent. (C-2)
- 1-4.18 Identify the steps to take if a patient refuses care. (C-1)
- 1-4.19 Given a scenario, demonstrate appropriate patient management and care techniques in a refusal of care situation. (C-3)
- 1-4.20 Describe what constitutes abandonment. (C-1)
- 1-4.21 Identify the legal issues involved in the decision not to transport a patient, or to reduce the level of care being provided during transportation. (C-1)
- 1-4.22 Describe how hospitals are selected to receive patients based on patient need and hospital capability and the role of the paramedic in such selection. (C-1)
- 1-4.23 Differentiate between assault and battery and describe how to avoid each. (C-2)
- 1-4.24 Describe the conditions under which the use of force, including restraint, is acceptable. (C-1)
- 1-4.25 Explain the purpose of advance directives relative to patient care and how the paramedic should care for a patient who is covered by an advance directive. (C-1)
- 1-4.26 Discuss the responsibilities of the paramedic relative to resuscitation efforts for patients who are potential organ donors. (C-1)
- 1-4.27 Describe the actions that the paramedic should take to preserve evidence at a crime or accident scene. (C-1)
- 1-4.28 Describe the importance of providing accurate documentation (oral and written) in substantiating an incident. (C-1)
- 1-4.29 Describe the characteristics of a patient care report required to make it an effective legal document. (C1)
- 1-4.30 Given a scenario, prepare a patient care report, including an appropriately detailed narrative. (C-2)

# **AFFECTIVE OBJECTIVES**

At the completion of this unit, the paramedic student will be able to:

- 1-4.31 Advocate the need to show respect for the rights and feelings of patients. (A-3)
- 1-4.32 Assess his/ her personal commitment to protecting patient confidentiality. (A-3)
- 1-4.33 Given a scenario involving a new employee, explain the importance of obtaining consent for adults and minors. (A-2)
- 1-4.34 Defend personal beliefs about withholding or stopping patient care. (A-3)
- 1-4.35 Defend the value of advance medical directives. (A-3)

# **PSYCHOMOTOR OBJECTIVES**

None identified for this unit.

#### **DECLARATIVE**

- I. Introduction
  - A. Legal duties and ethical responsibilities
    - 1. Legal duties are to the patient, medical director, and public
      - a. Set by statutes and regulations
      - b. Based on generally accepted standards
    - 2. Ethical responsibilities as a professional
      - a. Principles that identify conduct deemed morally desirable
      - b. Ethical responsibilities include
        - (1) Responding to the physical and emotional needs of every patient with respect
        - (2) Maintaining mastery of skills
        - (3) Participating in continuing education/ refresher training
        - (4) Critically reviewing performance and seeking improvement
        - (5) Reporting honestly and respecting confidentiality
        - (6) Working cooperatively and with respect for other emergency professionals
      - NAEMT Code of Ethics exemplifies ethical guidelines for the paramedic
  - B. Failing to perform the job appropriately can result in civil or criminal liability
  - C. The best legal protection is provision of appropriate assessment and care coupled with accurate and complete documentation
  - D. Laws differ from state to state and area to area get competent legal advice
- II. The legal system
  - A. Types of law
    - Legislative law
      - a. Enacted at federal, state and local levels by legislative branches of government
      - b. Product of Congress, city councils, district boards, and general assemblies
    - Administrative law
      - a. Regulations developed by a governmental agency
      - b. Agency has the authority to enforce rules, regulations, and statutes
    - 3. Common law
      - a. "Case" or "judge-made" law
      - b. Derived from society's acceptance of customs or norms over time
    - 4. Criminal law
      - a. Area of law in which the federal, state, or local government prosecutes individuals on behalf of society for violating laws designed to safeguard society
      - b. Violation punished by fine, imprisonment or both
    - 5. Civil (tort) law
      - a. Area of law dealing with private complaints brought by a plaintiff against a defendant for an illegal act or wrongdoing (tort)
      - b. Enforced by bringing a civil lawsuit in which the plaintiff requests the court to award damages
  - B. How laws affect the paramedic
    - 1. Scope of practice
      - a. Range of duties and skills a paramedic is allowed and expected to perform when necessary
      - b. Usually set by state law or regulation and by local medical direction
    - 2. Medical direction

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- a. Required for paramedic practice
- b. May be off-line or on-line, depending on state and local requirements
- c. Each system should have a policy to guide paramedics in dealing with on-scene physician
- 3. Medical practice act
  - a. Legislation that governs the practice of medicine; varies from state to state
  - b. May prescribe how and to what extent a physician may delegate authority to a paramedic to perform medical acts
- 4. Licensure and/ or certification
  - a. Certification
    - (1) Grants recognition to an individual who has met predetermined qualifications to participate in an activity
    - (2) Usually granted by a certifying agency or professional association, not necessarily a government agency
  - b. Licensure
    - (1) A process of occupational regulation
    - (2) Governmental agency, such as state medical board, grants permission to an individual who meets established qualifications to engage in the profession or occupation
  - c. Either or both may be required by state or local authorities to practice as a paramedic
- Motor vehicle laws
  - a. Motor vehicle code varies from state to state
  - b. Set standards for equipping and operating an emergency vehicle
- 6. Mandatory reporting requirements
  - a. Vary from state to state, but often include
    - (1) Child abuse and neglect; elder abuse; spouse abuse
    - (2) Sexual assault
    - (3) Gunshot and stab wounds
    - (4) Animal bites
    - (5) Communicable diseases
  - b. Content of report and to whom it must be made is set by law, regulation or policy
- 7. Protection for the paramedic
  - a. Infectious disease exposure notification
  - b. Immunity statutes
    - (1) Governmental immunity
    - (2) Good Samaritan laws
  - c. Special crimes against a paramedic
    - (1) Assault or battery to paramedic while performing duties
    - (2) Obstruction of paramedic activity
- C. The legal process
  - The role of the courts
    - a. Trial court
      - (1) Determines outcomes of individual cases
      - (2) Cases may be determined by judge or jury
    - b. Appellate court
      - (1) Hears appeals of decisions by trial courts or other appeals courts
      - (2) Decisions may set precedent for later cases
  - 2. Anatomy of a lawsuit
    - a. Incident occurs

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- b. Investigation is conducted by plaintiff's representative
- c. Complaint is filed in court and served on defendant
- d. Complaint is answered by defendant
- e. Discovery occurs
  - (1) Depositions (oral) or interrogatives (written) are taken
  - (2) Documents are gathered (e.g., patient records, patient care reports, etc.)
- f. Trial is conducted
- g. Decision is handed down by judge or jury
  - (1) Determines guilt or liability
  - (2) Determines damages and award, if any, to the plaintiff
- h. Decision may be appealed
  - (1) Either side may appeal
  - (2) Usually can only be based on errors in law made by the court
- i. Settlement occurs
  - (1) May occur at any stage of the lawsuit
  - (2) Plaintiff agrees to accept settlement in exchange for promise not to pursue case
- III. Legal accountability of the paramedic
  - A. Responsible to act in a reasonable and prudent manner
  - B. Responsible to provide a level of care and transportation consistent with education/ training
  - C. Negligence can result in legal accountability and liability
    - Components of negligence
      - a. Duty to act
        - (1) May be a formal contractual or an informal duty
        - (2) Duty may be undertaken voluntarily by beginning to care for a patient
        - (3) Duties include
          - (a) Duty to respond and render care
          - (b) Duty to obey laws and regulations
          - (c) Duty to operate emergency vehicle reasonably and prudently
          - (d) Duty to provide care and transportation to the expected standard
          - (e) Duty to provide care and transportation consistent with the scope of practice and local medical protocols
          - (f) Duty to continue care and transportation through to its appropriate conclusion
      - b. Breach of duty
        - (1) Standard of care
          - (a) Exercising the degree of care, skill, and judgement which would be expected under like or similar circumstances by a similarly trained, reasonable paramedic in the location involved
          - (b) Standard of care is established by court testimony and reference to published codes, standards, criteria and guidelines applicable to the situation
        - (2) Breach of duty may occur by
          - (a) Malfeasance performing a wrongful or unlawful act
          - (b) Misfeasance performing a legal act in a manner which is harmful or injurious
          - (c) Non-feasance failure to perform a required act or duty
        - (3) In some cases, negligence may be so obvious that it does not require extensive proof

- (a) Res ipsa loquitur the injury could only have been caused by negligence
- (b) Negligence per se negligence is shown by the fact that a statute was violated and injury resulted
- c. Damage to patient or other individual (i.e., the plaintiff)
  - (1) Proof that the plaintiff suffered compensable physical or psychological damages, such as
    - (a) Medical expenses
    - (b) Lost earnings
    - (c) Conscious pain and suffering
    - (d) Wrongful death
  - (2) Punitive (punishing) damages could be awarded
    - (a) Awarded to punish gross negligence or willful and wanton misconduct
    - (b) Punitive damages are usually not covered by malpractice insurance
- d. Proximate cause
  - (1) The action or inaction of the paramedic was the cause of or worsened the damage
  - (2) The fact that the paramedic's act or inaction would result in the damage must have been reasonably foreseeable by the paramedic
  - (3) Usually established by expert testimony
- 2. Defenses to negligence
  - a. Good Samaritan laws
    - (1) Do not generally protect providers from acts of gross negligence, reckless disregard, or willful or wanton conduct
    - (2) Do not generally prohibit the filing of a lawsuit
    - (3) May provide coverage for paid or volunteer providers
    - (4) Varies from state to state
  - b. Governmental immunity
    - (1) Trend is toward limiting protection
    - (2) May only protect governmental agency, not provider
    - (3) Varies from state to state
  - c. Statute of limitations
    - (1) Limit the number of years after an incident during which a lawsuit can be
    - (2) Set by law and may differ for cases involving adults and children
    - (3) Varies from state to state
  - d. Contributory negligence
    - (1) Plaintiff may be found to have contributed to his or her own injury
    - (2) Damages awarded may be reduced or eliminated based on the plaintiff's contribution to his or her injury
  - e. Liability insurance
- D. Special liability concerns
  - 1. Liability of the paramedic medical director
    - a. On-line direct supervision regarding patient care
    - b. Off-line
      - (1) Provided by use of protocols, including standing orders
      - (2) Indirect supervision
  - 2. Liability for "borrowed servants"

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- a. Liability for actions of EMT-Basic supervised by the paramedic
- b. Depends on degree of supervision and control given to the paramedic
- 3. Civil rights
  - a. May not discriminate in providing service to a patient by reason of race, color, sex, national origin, or, in some cases, ability to pay
  - b. Patients should be provided with appropriate care regardless of disease condition (e.g., AIDS/ HIV, other communicable disease, etc.)
- 4. Off-duty paramedic
  - a. May not have authority to perform paramedic procedures which require delegation from a physician
  - b. Varies from state to state
- E. Protection against negligence claims
  - 1. Appropriate education/ training and continuing education
  - 2. Appropriate medical direction -- on- and off-line
  - 3. Accurate, thorough documentation
  - 4. Professional attitude and demeanor
- IV. Paramedic patient relationships
  - Confidentiality
    - 1. Confidential information
      - a. Patient history
      - b. Assessment findings
      - Treatment rendered
    - 2. Release of information
      - a. Requires written permission from patient or legal guardian
      - b. Permission not required for release of select information
        - (1) To other providers with a need to know in order to provide care
        - (2) When required by law
        - (3) When required for third party billing
        - (4) In response to a proper subpoena
    - 3. Improper release of information or release of inaccurate information can result in liability
      - a. Invasion of privacy
        - (1) Release, without legal justification, of information on a patient's private life which might reasonably expose the individual to ridicule, notoriety or embarrassment
        - (2) The fact that the information is true is not a defense
      - b. Defamation making an untrue statement about someone's character or reputation without legal privilege or consent of the individual
        - (1) Libe
          - (a) False statements about a person made in writing or through the mass media
          - (b) Made with malicious intent or reckless disregard for the falsity of the statements
        - (2) Slander
          - (a) False verbal statements about a person
          - (b) Made with malicious intent or reckless disregard for the falsity of the statements
  - B. Consent
    - Conscious, competent patients have the right to decide what medical care and transportation to accept

- a. Patient must be of legal age and able to make a reasoned decision
- b. Patient must be properly informed
  - (1) Nature of the illness or injury
  - (2) Treatment recommended
  - (3) Risks and dangers of treatment
  - (4) Alternative treatment possible and the risks
  - (5) Dangers of refusing treatment (including transport)
- c. Conscious, competent patient can revoke consent at any time during care and transport
- 2. Types of consent
  - a. Expressed consent
    - (1) Patient directly agrees to treatment and gives permission to proceed
    - (2) Consent can be expressed non-verbally by action or allowing care to be rendered
  - b. Informed consent consent given based on full disclosure of information
  - c. Implied consent
    - (1) Consent assumed from a patient requiring emergency intervention who is mentally, physically or emotionally unable to provide expressed consent; sometimes called emergency doctrine
    - (2) Is effective only until patient no longer requires emergency care or regains competence to make decisions
  - d. Involuntary consent
    - (1) Treatment allowed in certain situations granted by authority of law
    - (2) Patients held for mental health evaluation or as directed by law enforcement personnel who have the patient under arrest
- 3. Special consent situations
  - a. Minors
    - (1) In most states, a person is a minor until age 18, unless emancipated
    - (2) Emancipation may include
      - (a) Minors who are married, parents, or in the armed services
      - (b) Individual living independently and self-supporting (e.g., college student not living at home or receiving financial aid from parents)
    - (3) Unemancipated minors are not able to give or withhold consent consent of parent, legal guardian or court-appointed custodian is usually required
    - (4) Emergency doctrine applies to minors when parent or guardian cannot be contacted
  - b. Mentally incompetent adults
    - (1) If there is a legal guardian, consent may be given or withheld by the guardian
    - (2) Emergency doctrine applies if no one legally able to give consent can be contacted
  - c. Prisoners or arrestees
    - (1) Court or police who have custody may authorize emergency treatment
    - (2) Usually limited to care needed to save life or limb
  - d. Refusal of care or transport
    - (1) Patient must be conscious and able to make a reasonable decision
    - (2) Make multiple attempts to convince the patient to accept care
    - (3) Enlist the help of others to convince the patient

- (4) Assure that the patient is informed about the implication of the decision and potential for harm
- (5) Consult medical direction
- (6) Request patient and a disinterested witness to sign a "release from liability" form
- (7) Advise the patient that he or she may call again for help if needed
- (8) Attempt to get family or friends to stay with the patient
- (9) Document situation and actions thoroughly on patient care report
- e. Decisions not to transport
  - (1) Involve medical direction
  - (2) Thoroughly document reasons for decision
- 4. Legal complications related to consent
  - a. Abandonment
    - (1) Terminating care when it is still needed and desired by the patient, and without assuring that appropriate care continues to be provided by another qualified provider
    - (2) May occur in the field or when a patient is delivered to the emergency department
  - b. False imprisonment
    - (1) May be charged by a patient who is transported without consent or who is restrained without proper cause or authority
    - (2) May be a civil or criminal violation
  - c. Assault
    - (1) Threatening, attempting or causing fear of offensive physical contact with a patient or other individual (for example, threatening to restrain a patient unless he or she quiets down)
    - (2) May be a civil or criminal violation
  - d. Battery
    - (1) Unlawful touching of another person without consent (for example, drawing a patient's blood without permission)
    - (2) May be a civil or criminal violation
- C. Use of force
  - Unruly or violent patients
  - 2. Use of restraints
  - 3. Involve law enforcement, if possible
  - 4. Use only force considered to be "reasonable" to prevent harm to the patient or others
  - 5. Must never be punitive
- D. Transportation of patients
  - 1. Level of care during transportation
    - a. Level of personnel attending the patient
    - b. Complications resulting from changing the level of care delivered
  - 2. Use of emergency vehicle operating privileges
    - a. Must operate in conformity to laws, regulations and policies
    - b. Must operate in a manner which safeguards the patient, crew and public
  - 3. Choice of patient destination
    - a. Hospitals selected based on patient need and hospital capability
    - b. Protocols, the paramedic, medical direction, and patient play a role
    - c. Patients choice should be honored unless situation or patient's condition dictates otherwise
  - 4. Payor protocols

#### V. Resuscitation issues

- A. Withholding or stopping resuscitation
  - 1. Procedure should be established by local protocols
  - 2. Role of medical direction should be clearly delineated
- B. Advance directives
  - 1. Status depends on state laws and local protocols
  - 2. Written patient statements of preference for future medical treatment
    - a. Living will
    - b. Durable power of attorney for health care
    - c. Do not resuscitate (DNR) orders
  - 3. Authority granted in part by the Patient Self-Determination Act of 1990
  - Medical direction must establish and implement policies for dealing with advance directives
    - a. Policy should specify paramedic care for the patient with an advance directive
    - b. Must provide for reasonable measures of comfort to the patient and emotional support to family and loved ones
- C. Potential organ donation
  - 1. Identify the patient as a potential donor
  - 2. Establish communication with medical direction
  - 3. Provide emergency care that will help maintain viable organs
- D. Death in the field
  - 1. Follow state or local protocols
  - 2. Consult medical direction for guidance

# VI. Crime and accident scene responsibilities

- A. Crime scene
  - 1. Protect self and other EMS personnel
  - 2. Care for the patient(s) as necessary
  - 3. Notify law enforcement if not already involved
  - 4. Observe and document any items moved or anything unusual at the scene
  - 5. Protect potential evidence
    - a. Leave holes in clothing from bullet or stab wounds intact, if possible
    - b. Do not touch or move items at scene unless necessary in delivery of care
- B. Accident scene
  - 1. Protect self and other EMS personnel
  - 2. Care for the patient(s) as necessary
  - 3. Summon additional personnel if needed

### VII. Documentation

- A. Importance
  - 1. If it is not written down, it was not done.
  - 2. Memory is fallible claims may not be filed until years after an event
- B. Characteristics of an effective patient care report
  - Completed promptly
    - a. A report made "in the course of business", not long after the event
    - b. Prompt completion essential to the patient care report becoming part of the hospital record
  - 2. Completed thoroughly
    - a. Coverage of assessment, treatment and other relevant facts
    - b. Should paint a complete, clear picture of patient condition and care

- 3. Completed objectively
  - a. Observations rather than assumptions or conclusions
  - b. Avoid use of emotionally and value-loaded words or phrases
- 4. Completed accurately
  - a. Descriptions should be as precise as possible
  - b. Avoid using abbreviations or jargon not commonly understood
- 5. Confidentiality maintained
  - a. Should have a standard policy on release of information
  - b. Whenever possible, patient consent should be obtained prior to release of information
- C. Copy to become part of patient's hospital record
- D. Maintained at least for extent of statute of limitations